



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

April 13, 2012

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To: Supervisor Zev Yaroslavsky, Chairman
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Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to be "W. T. Fujioka", written over a horizontal line.

SACRAMENTO UPDATE

This memorandum contains pursuits of County positions on legislation related to: 1) design-build authority and 2) liability for sidewalk repairs; the status of County-sponsored legislation related to the Brown Act; an update on County-advocacy legislation related to the CalFresh Program; and a report on legislation of County-interest related to reporting requirements on child fatalities.

Pursuit of County Position on Legislation

AB 1901 (Jones), as introduced on February 22, 2012, would: 1) extend the sunset date on existing design-build authority granted to counties from July 1, 2014 to July 1, 2016; 2) eliminate the project cost threshold that authorizes projects in excess of \$2.5 million to use the design-build method; and 3) modify the annual reporting requirements that counties must submit to the Legislative Analyst's Office.

Existing law authorizes counties to use the design-build method for projects costing more than \$2.5 million until July 1, 2014. Design-build is defined as a procurement process in which both the design and construction of a project are provided by a single entity. The design-build contract awarded after a competitive bid or best value competition covers the design and construction of a project with a company or consortium that acts as both the project designer and builder. The design-build entity arranges all architectural, engineering, and construction services, and is responsible for delivering the project at a guaranteed price and schedule based upon performance criteria set by the public agency.

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The Department of Public Works (DPW) indicates that the design-build method has become one of the preferred contracting processes for many design and construction projects, due to its advantages over the traditional design-bid-build process, including: 1) establishing a single source of responsibility; 2) shielding local agencies from direct exposure to defects and omissions in the design or construction; 3) reducing total project delivery time through direct collaboration of the Architect-Engineer (A/E) and the constructor; 4) reducing the number of formal change orders originating from local agencies; 5) reducing total project cost through avoidance of claims and delays; and 6) altering the traditionally adversarial relationship between the A/E and the constructor into a more collaborative approach.

Design-build is a valid and tested method for delivering capital projects and, if managed appropriately, can result in improved design and construction project performance. Public agencies seek firms that give more attention to project constructability and that practice total quality management have found that design-build is one method that addresses most of these concerns by providing a single source of accountability and responsibility for projects, simplifying the contractual interrelationships of the parties, and reducing legal entanglements.

On June 17, 2008, your Board adopted the County's Design-Build Policy authorizing the use of design-build contracting authority as an option for applicable County construction projects in excess of \$2.5 million and authorized DPW to issue Request for Proposals for design-build projects. Since adoption of the policy, 35 design-build projects, totaling over \$1.8 billion have been completed or are currently in progress. Some of the major projects utilizing design-build include: Harbor-UCLA Medical Center Surgery/ER Addition, High Desert Health System Multiservice Ambulatory Care Center, Martin Luther King, Jr. (MLK)-New Multiservice Ambulatory Care Center Building, MLK Hospital Inpatient Tower Renovation, Bob Hope Patriotic Hall Phase II, and Hall of Justice Repair and Reuse. DPW indicates that it has found this selection and project delivery method is more effective and beneficial than the traditional design-bid-build methodology.

AB 1901 would eliminate the \$2.5 million limitation, which would allow DPW to use the design-build method on smaller scale projects, increasing the potential benefits for enhanced delivery of projects. In addition, extending the sunset date to July 1, 2016, would provide for an additional two years to plan, procure, and award design-build projects increasing the potential number of projects using this delivery method and providing an added opportunity to report the specific benefits to the Legislative Analyst's Office.

The County has previously supported legislation similar to AB 1901, including County-supported AB 1511 (Chapter 350, Statutes of 2005), and County-supported SB 287 (Chapter 376, Statutes of 2005), which authorized the County of Los Angeles and several other counties to employ the design-build contract method for projects to construct buildings and directly related improvements.

AB 1901 is sponsored by the County of San Diego and supported by the American Council of Engineering Companies; Associated General Contractors; California State Association of Counties; County of San Bernardino Design-Build Institute of America, Western Pacific Region; and Regional Council of Rural Counties. It is opposed by the American Federation of State, County and Municipal Employees (AFSCME); California State Pipe Trades Council; California State Association of Electrical Workers; Professional Engineers in California Government and Western States Council of Sheet Metal Workers. AB 1901 is awaiting a hearing in the Assembly Local Government Committee.

Therefore, consistent with existing Board policy to support legislation that authorizes counties to use the design-build contract method for projects to construct buildings and directly related improvements, **the Sacramento advocates will support AB 1901 and request that AB 1901 be amended to delete the existing sunset on the authority of counties to enter into a design-build contract, thereby permanently establishing the authority of counties to use the design-build method.**

In addition, since SB 1509 (Simitian), as introduced on February 24, 2012, is similar to AB 1901 in that it would delete the existing sunset date on the authority of school districts to enter into a design-build contract for the design and construction of a school facility, thereby permanently establishing the authority of K-12 school districts to enter into design-build contracts. According to DPW, should the authority for school districts to utilize the design-build method be permanently established as proposed under SB 1509, this would establish a precedent that would benefit establishing a permanent authority for counties to use the design-build method and support similar proposals. Therefore, the Sacramento advocates will request that SB 1509 be amended to delete the existing sunset on the authority of counties to enter into a design-build contract, thereby permanently establishing the authority of counties to use the design-build method.

SB 1509 is supported by Coalition for Adequate School Housing; County School Facilities Consortium; Design-Build Institute of America, Western Pacific Region; Los Angeles Unified School District; San Mateo County Community College District. It is opposed by AFSCME, AFL-CIO; and Professional Engineers in California Government. SB 1509 passed the Senate Education Committee by a vote of 7 to 0 on

April 11, 2012. This measure is awaiting a hearing in Senate Appropriations Committee.

AB 2231 (Fuentes), which as introduced on February 24, 2012, would require a city, county, or city and county to repair any sidewalk out of repair or pending reconstruction if that sidewalk is owned by the local entity or if the repairs are required as a result of damage caused by plants or trees. The bill also provides that if the local entity fails to carry out the repairs, the local entity shall be liable for any injury resulting from the failure to repair. Finally, the bill would prohibit the local entity from imposing an assessment for sidewalk repairs against the owner of private property fronting on any portion of a sidewalk.

Existing law provides that property owners are responsible, and liable, for maintaining any sidewalk adjacent to their property in such a condition that will not endanger people or property, or interfere with public convenience. Property owners are responsible to carry out and bear the cost for repairs on adjacent sidewalks that are out of repair. Current law also allows public entities to impose an assessment on the adjacent property owner for the cost of sidewalk repairs, if the owner does not make the necessary repairs. Many cities and counties have implemented long-term and comprehensive sidewalk repair projects that benefit property owners.

AB 2231 would create a new State mandate and make significant changes to California law by making cities and counties responsible for the repair of any sidewalks they own or any sidewalks that have been damaged by a plant or tree. The legislation makes cities and counties liable for any injury resulting from the failure to repair a sidewalk. The bill also prohibits cities and counties from imposing an assessment on the adjacent property owner for the repair of the sidewalk.

Beyond the impact to local budgets due to a new State Mandate, AB 2231 opens up cities and counties to a level of liability not currently prescribed in law. The proposed changes would also amend long-standing statutes related to sidewalk repair, disrupting the successful and orderly sidewalk repair programs in place in cities and counties throughout the State.

The Department of Public Works (DPW) recognizes the importance of "walkability" in the unincorporated areas of the County and the need to encourage healthy living. As such, current practice is to repair/replace sidewalk areas as identified by residents in the County's unincorporated communities to ensure continued safe use of sidewalks. Recently, a more aggressive approach has been undertaken to manage risk associated with sidewalk displacements and DPW is in the process of developing a 10-year plan to

eliminate any backlog of needed sidewalk repair work and further promote walkable unincorporated communities.

Upon initial review of AB 2231, County Counsel indicates that the bill proposes a change in State law that would increase the County's exposure for dangerous condition of public property because the County would become liable for all sidewalk defects in the County right of way regardless of who created the defect and had notice and an opportunity to cure. Preliminary assessment of current law indicates that the County may not be liable for all such defects even if they occur within the County right of way.

Therefore, consistent with existing Board-approved policy to oppose new unfunded mandates unless they promote a higher priority and because AB 2231 is contrary to existing Board-approved policy to support proposals to mitigate the effects of joint and several liability upon public entities by limiting liability to any party to be responsible for their own proportion of damages, **the Sacramento advocates will oppose AB 2231.**

AB 2231 is scheduled to be heard in the Assembly Local Government Committee on April 18, 2012. The bill is opposed by the California State Association of Counties and the League of California Cities. There is currently no registered support on file.

Status of County-Sponsored Legislation

County-sponsored AB 1736 (Smyth), which as amended on March 29, 2012, would expand exemptions under the Brown Act to include meetings with the Governor on issues related to the security of public facilities and services, passed the Assembly Local Government Committee by a vote of 6 to 0 on April 11, 2012. This measure now proceeds to the Assembly Floor.

Status of County-Advocacy Legislation

County-supported AB 1560 (Fuentes), which as introduced on January 30, 2012, would require the State Department of Social Services, to the extent permitted by Federal law, to waive the CalFresh Program gross income test for any individual who is categorically eligible for CalFresh and who is a member of a household that receives, or is eligible to receive, medical assistance under the Medi-Cal Program, passed the Assembly Human Services Committee by a vote of 4 to 2 on April 10, 2012. This measure now proceeds to the Assembly Appropriations Committee.

Legislation of County Interest

AB 1440 (Perea), which as amended on March 29, 2012, would, among other provisions, require county child welfare agencies, within 60 calendar days of

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a determination that abuse or neglect led to the death of a child, to review and prepare a written report with specified information regarding the child's death, and to submit the report to the California Department of Social Services (CDSS) within 10 business days of its completion. The measure would also require CDSS, commencing January 1, 2013, to include information from the county child welfare agency death review reports in its annual report identifying child fatalities and any systemic issues, and require the annual report to include additional specified information.

AB 1440 passed the Assembly Human Services Committee by a vote of 6 to 0 on April 10, 2012 and now proceeds to the Assembly Appropriations Committee. At the Assembly Human Services Committee hearing, a representative with the County Welfare Directors Association (CWDA) stated that the Association has concerns with the bill and proposed amendments, and that they will continue to work with the author to address them. CWDA's proposed amendments include the following: 1) provide that counties with existing internal review procedures to investigate these child death cases, as of the date of the bill's enactment, would be deemed to meet the bill's new requirements; and 2) require an annual report to the state by each county that provides data about child deaths and any systemic issues that need improvement, so that the state can analyze these reports and provide any overall findings in the child death report it already produces annually. According to the Department of Children and Family Services and County Counsel, both of the above amendments would benefit the County which currently has internal review procedures in place.

As previously reported, there is no existing Board policy relating to AB 1440; however, we will continue to analyze the bill and remain in communication with CWDA to identify and address any potential concerns to the County.

We will continue to keep you advised.

WTF:RA
MR:IGEA:sb

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants